

# **State of Kansas**

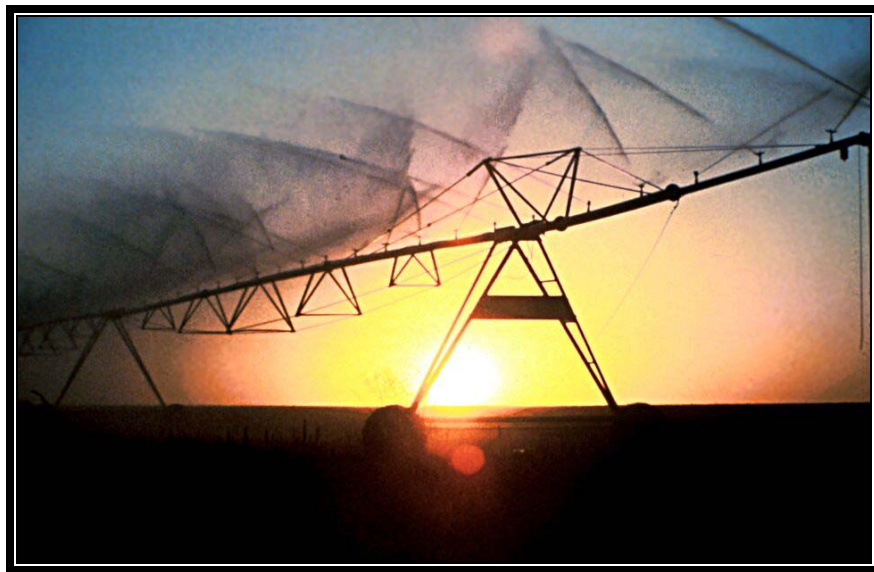


## **State Conservation Commission**

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### **Water Right Transition Assistance Pilot Project Program**

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## **FY 2009 Legislative Report**

**January 12, 2009**

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## **Executive Summary**

The Water Right Transition Assistance Pilot Project Program (WTAP) was authorized by the Kansas Legislature in 2006 as a 5 year pilot project. The purposes of this unique, innovative program are 1) to reduce the consumptive use of water in targeted, high priority areas of Kansas by issuing financial grants for the voluntary, permanent dismissal of privately held water rights; and 2) to evaluate the results of the pilot project and to develop a viable model for the beneficial implementation of a long term water right retirement program.

By 2007, the State Conservation Commission (SCC) had developed the project's logistical framework, approved formal administrative regulations for implementing the program, and completed the legally required public notice and public meeting requirements stipulated by the enabling legislation. Public and stakeholder input was solicited and duly incorporated during this period.

In spite of extensive advertisement during the first enrollment period of Fall 2007, only four applications were received within the two legislatively designated hydrologic target areas, the Rattlesnake Creek Sub-basin area and the Prairie Dog Creek Basin area. Of those applications, only one was determined to be technically eligible under the program rules; it was fully approved at \$83,028 – 225 acre-feet of annual appropriation authorization was permanently retired.

In Spring 2008, SCC subsequently set out to refine the program parameters in order to gain more producer interest and participation. After again receiving considerable dialogue and input from stakeholder groups, SCC revised the program rules to incorporate 5 basic improvements:

1. Providing two sign-up periods – fall and spring.
2. Implementing a fixed price-point strategy based directly on HCWU.
3. Incorporating additional resolution to “partial water right” enrollments.
4. Providing more definition to the procedure of adding target areas.
5. Clarifying inter-agency roles and responsibilities.

Simultaneously, the Division of Water Resources' Chief Engineer approved the designation of six additional High Priority target areas in the NW KS GMD#4.

During the recent Fall 2008 enrollment period, SCC received a total of 41 applications representing \$9,799,400 in competitive bids – 3 from the Rattlesnake Creek Sub-basin and 38 from the GMD#4 HP areas. In that regard, SCC is currently processing and finalizing contracts on 20 applications in a total amount of the budgeted \$3.3 Million funds. These applications represent approximately 5,753 acre-feet of annual appropriation authorization which will be permanently retired, and also represent a net reduction to targeted streams and aquifers of approximately 2294 acre-feet of historic consumptive water use.

Other GMDs and local entities have shown serious interest in having additional WTAP target areas designated by the Chief Engineer. At the present time, SCC and DWR are communicating with two organizations about a request for the designation of an additional WTAP target area in Hodgeman County.

## Program Description

### Overview

The Water Right Transition Assistance Pilot Project (WTAP) is a voluntary, incentive-based water conservation program whereby a participating landowner permanently retires (dismisses) water rights in exchange for compensation by the State of Kansas. WTAP is administered by the SCC for “the purpose of reducing consumptive use in the target or high priority areas of the state...”

The pilot project is authorized for 5 years (beginning July 1, 2007) with an annual budget from federal and state funds not allowed to exceed \$1.5 million. Unexpended fund balances can be carried over to successive fiscal years with the approval of the Legislature. Although it is a “stand-alone” project, WTAP was envisioned to be consistent with, and complimentary to, the water management policies and programs of other federal, state, local, and private entities operating on a statewide basis. As such, it does allow for cooperative cost-sharing from the federal or state government, or private sources, for water right retirement grants.

Mutually agreeable compensation is paid to a landowner in the form of a financial assistance “grant” which can be distributed in installments of up to 10 years. The grant is available to aid willing sellers in the transition from irrigation to dryland farming. The amount of the compensation is largely determined by a fixed price point value determined annually by the SCC in conjunction with other agencies, and many other relevant factors such as the seniority of the water right, its historic consumptive water use quantity, the proximal relationship of the water right within the targeted water supply, and a competitive bid price submitted by the owner. WTAP grants are tied to obligations of permanent water right dismissals which ensure tax dollars are invested wisely and efficiently. They are only available in areas closed to new appropriations of water which have been determined to be “in need of aquifer restoration and stream flow recovery.”

### Program Strategy

The goal of WTAP is to strategically reduce the demand on distressed aquifers and streams, and assist in returning the overall level of water appropriation (demand) back into conformity with water resources (supply). The retirement of some water rights in overdeveloped hydrologic systems, and thereby the cessation of some water diversions, will ultimately provide a measure of recovery to regional water resources and help to re-establish the long-term stabilization of water budgets.

The state’s priority for the contractual dismissal of water rights is given to the most senior rights which provide the greatest consumptive use reductions and the greatest direct hydrologic impacts at the lowest reasonable, affordable price via a competitive bid process. The main objective of each contracted water right retirement is to decrease the “historic consumptive water use” which requires a very prescribed analysis of the most recent six years of use.

WTAP targets the retirement of agricultural irrigation water rights because they typically authorize the greatest appropriated quantities and because they are usually the most available (liquid) in the marketplace. Lands to which the dismissed water rights were appurtenant can be used for other purposes, but they can also continue to be dryland farmed or can be re-authorized for irrigation from another water right (subject to additional consumptive use analysis and approval by DWR). Landowners may also propose the dismissal of just partial water rights. These provisions help landowners retain viable options for future financial alternatives and economic decision-making.

### **Water Right Eligibility**

Only privately owned water rights are eligible for WTAP retirement grants, and the current statutory language strongly infers that only irrigation rights are eligible at this time. To be considered eligible, a water right must have been actively used for lawful, beneficial purposes in at least six of the previous 10 years prior to enrollment. Further, the water right must be located in a designated target area which has been approved by the Chief Engineer and basically closed to all new appropriations of water (with very limited exceptions). The water right location must also have been designated by the Chief Engineer to be an area in need of stream recovery and / or aquifer restoration, and the state's dismissal of the water right would have a net reduction in consumptive water use of the aquifer or stream designated for restoration or recovery by the chief engineer. For a partial water right to be deemed an eligible water right, the partial water right must be associated with a portion of the distribution system, a point of diversion, a place of use, or a type of use that is being physically discontinued.

In 2008, SCC amended the initial compensation methodology whereby the "fair market value" of a water right was used to assess the basic cost in the WTAP bidding and compensation components. In order to establish a more consistent statewide standard, and to avoid speculation and short-term spot variability which normally occurs in land appraisals and water acquisitions, SCC determined that using a statewide "fixed price point strategy" would be the most appropriate and equitable benchmark. For the FY2009 enrollment periods, the SCC established the fixed price at \$2,000 per acre-foot of HCWU water. In the competitive bidding process, applicants may bid less than the maximum fixed price in order to receive a more favorable ranking of their application.

### **Application Evaluation**

Each WTAP application is evaluated for its conformity to the statutory and regulatory requirements of the program. The supporting information supplied with each application regarding water use information, cropping history, and owner fiduciary relationships are also analyzed for accuracy and compliance. The proposed water right location within the priority units of each target area (see Attachment D) is verified. Several other relevant hydrologic factors are also reviewed to make an overall comparison of an application's suitability and preference for approval and grant funding.

After initial review by SCC, the application is referred to the Chief Engineer for an analysis of the water right eligibility, a determination of the historic consumptive water use available for retirement under the proposed water right, and for a recommendation of the suitability of retiring the water right regarding the hydrologic impacts of its retirement. If the application is located within a groundwater management district, the application is forwarded to that appropriate office for their opportunity to review the application and to provide a recommendation regarding its ranking or favorability for approval.

All applications can be individually rated and scored according to list of multiple “hydro” factors. Each application is then ranked against each other according to relative priority within target areas and available funds. Applicants must be notified of the agency’s decision by January 15 after the Fall sign-up period, and by May 31 after the Spring sign-up period (if funds are available).

[In the potential case of the total number of eligible applications in multiple target areas exceeding the available funding supply, additional agency decisions would be made regarding the most cost-effective strategy of retiring the most consumptive water use in each target area. The limited time available in the remaining life of the pilot project and the possibility of future funding constraints would be considered in deciding which applications and target areas to approve.]

### **Enrollment Conditions**

Not more than 10% of a county’s irrigated acres can be eligible for retirement under WTAP. Approval of partial water right retirements is allowed up to a maximum of not exceeding 30% of the total program funds available. The approval of “partial” water right retirements also requires additional consumptive use analysis and approval by the Kansas Division of Water Resources.

Dryland farming is allowed after the water right is retired, and limited, temporary watering of up to three years is allowed to establish a permanent cover on the land being transitioned from irrigation, if necessary. The affected land may also be irrigated again from other nearby water rights, but only subject to additional consumptive use analysis and approval by the Kansas Division of Water Resources.

Successful applicants may accept the WTAP transition grant in a lump sum payment or in equal annual installments not to exceed 10 years. If approved for a retirement grant, a water right must be completely separated from, or completely “overlapped” with, all other related water rights. All wells being retired must be properly capped, plugged, or reconditioned as a domestic well in accordance with regulatory standards of the Kansas Department of Health and Environment.

### **Potential Economic / Resource Impacts**

The WTAP program is intended to produce a greater long-term stability to water resources which are currently supporting local economies based on over-allocated, over-developed, and distressed water resources – or which have some

other compelling issue which is in the State's overriding interest to address. Local citizens will benefit from the stabilization of these water resources which contribute to community sustainability and the quality of life.

These water resources and all water rights associated with them, including industries, municipalities, and other public water supplies, will eventually require administration and curtailment of water rights in periods of shortages. The expense of significant regulatory activities can be avoided through continued implementation and refinement of the program.

The WTAP program is developed on the absolute assumption that grant recipients are impacted positively if receiving financial assistance for the transition of irrigated crop land to dry crop land or grass land. The voluntary dismissal of water rights by private landowners (via participation in the program) will only be undertaken if evaluated to be economically beneficial to the participating individual in consideration of the prospects for the short-term and long-term sustainability of their overall business operation.

These prospects include the owner's awareness and assessment about local water issues and the likelihood of any possible regulatory activities involving water rights in their area. Because of the extreme fiscal and resource variability inherent in every irrigated farming operation, the calculation of the overall impact of incentive payments to any particular producer for water right retirements in any particular area of the state can not be considered representative of the class.

Because of statewide variations in soil types, water resources, and topographic conditions, the differences in irrigated crop land, dry crop land, and grass land appraisals also vary tremendously. Differences in market value, and appraised agricultural use values, vary greatly within and among the WTAP target areas. In those counties where the WTAP program has identified target areas for water right retirements, a change in the land classification for property tax valuation should be expected. In those counties where agricultural irrigated land is transitioned to dry crop land or grass land, a concurrent reduction in assessed valuation, and therefore tax receipts to the county government, will occur.

In WTAP program target areas, local citizenry and businesses will be negatively impacted over an extended period of time by the reduction of ancillary agricultural products and services associated with irrigated crop production. Tenants and laborers will be impacted negatively if a landowner participates in the program with the resultant effect of diminishing leasing or employment opportunities because of correlative production decreases. Businesses selling agricultural inputs such as seed, fertilizer, fuel, and storage will be impacted negatively by a reduced level of irrigation related sales.

The WTAP program will incur an economic cost, and benefit, to all citizens and property owners (taxpayers) in Kansas. The immediate cost to citizens statewide will be realized through public monies expended on a financial assistance program targeted to a select group of recipients which compensates the voluntary retirement of an individual's property right in exchange for the benefit of conserving the public's water resources.



Some losses, however, will be offset by the incentive grants received by landowners. These dollars will be circulated through the economy by investment in better standards of living and new economic enterprises with employment opportunities. While not highly likely in the short term prognosis, it is possible that land with economic incentives provided under the WTAP program could be converted to even higher economic yielding purposes than before, and then concurrent increases to the tax base of local governments could be realized.

## **Legislative Reporting Requirement**

The WTAP authorizing legislation, K.S.A. 2006 Supp. 2-1930 outlines the following requirement in Section 1(K)(1):

**The State Conservation Commission shall report annually to the Senate standing committee on natural resources and the House standing committee on environment on the economic impact studies being conducted on the reduction of water consumption and the financial impact on the communities within the program areas. Such studies shall show comparative data for areas and communities outside the program area.**

During the first enrollment period of 2007, only one irrigation water right was determined eligible and contracted for permanent retirement under WTAP. After the second enrollment period (Fall 2008), the participation increased considerably – SCC received 41 applications, and contracts are being processed and finalized on 20 of those. Unfortunately, there has not been sufficient time to make an analysis of even the short-term effects of these water rights being retired until the next irrigation / water level measurement season has begun. Further, WTAP has not yet experienced sufficient enrollment in any one particular target area, or over any statistically significant duration of time, to make a valid comparative analysis about the measurable reduction of water consumption and the long-term financial impact on the communities within or outside the program areas. Attempting to do so would only be premature and speculative at best.

During the last two years, the market for agricultural commodities and the associated value of agricultural land has enjoyed record increases, and now just recently significant decreases. This upward volatility in land and crop values, combined with a recent return to more normal rainfall and regional water supply conditions, is suspected to have significantly (albeit temporarily) suppressed the prospects for WTAP enrollment which was expected during conceptual project development and program approval by the Legislature. The participation experienced during the second sign-up period, however, is very encouraging.

In order to demonstrate permanent water conservation success for the long-term benefit of the target areas and the State as a whole, the WTAP program must be programmatically constructed to withstand the cyclical nature of agricultural variables such as weather, energy prices, commodity markets, land prices, and other uncontrollable, external variables.



Although it is not formally mentioned in any particular legislative declaration, certainly one unstated objective of the WTAP pilot project is to determine how a suitable methodology can actually be developed which, in spite of the many variable economic factors and stressors, will reduce the historic consumptive use of water in targeted, high priority areas in the most fair and affordable, cost-effective manner. This will take more time and experience.

With the limited experience gained during the first enrollment period of 2007, and now 2008, SCC has already significantly modified several of the important program parameters to improve interest and participation. Most importantly, the WTAP compensation methodology has been simplified and streamlined in a manner which is more easily understood by potential applicants, and which can be updated to keep pace with water right market conditions.

[The CREP program also requires an annual report to the Legislature on the economic impact studies being undertaken by SCC. Where possible, SCC will integrate the relevant economic analysis findings of Golden et. al. into the future economic impact analysis of both WTAP and CREP.]

## **FY2009 Activity / Results**

The initial formation of the WTAP logistical framework, and the conceptual drafting of complimentary rules and regulations, were both developed with public input during the first year of implementation. After formal proposal, review, and approval, final agency administrative rules and regulations were adopted by the SCC on July 2, 2007 (FY 2008). They officially became effective on August 3, 2007.

With input from stakeholder groups and agency partners, SCC modified the program rules in FY2009 in anticipation of promoting more producer interest and participation. The major features of the rule changes were designed to accomplish the following improvements:

1. Providing two sign-up periods – fall and spring.
2. Implementing a fixed price-point strategy based directly on HCWU.
3. Incorporating additional resolution to “partial water right” enrollments.
4. Providing more definition to the procedure of adding target areas.
5. Clarifying inter-agency roles and responsibilities.

Public hearings on the proposed rules were conducted in Topeka and Hays on August 19, 2008. The amended rules and regulations of the WTAP program, which received minimal public comment during the development, review, and hearing process, officially became effective on September 26, 2008.

During this time of the rules being amended, the Chief Engineer received a formal request from the Board of Directors, Northwest Kansas Groundwater Management District No. 4, to designate six “High Priority Areas” (target areas) in Cheyenne, Sherman, Thomas, and Sheridan Counties for the purposes of WTAP. Concurrent with that request was the submission of all of the necessary requirements and supporting documentation to substantiate the request.

Subsequently, on September 22, 2008, the Chief Engineer officially closed these areas to further appropriation of water (with very limited exceptions), declared them to be in need of aquifer restoration, and approved the designation of the areas as areas eligible for accepting WTAP applications.

As required by the original statutory authorization,

The state conservation commission shall hold at least two meetings in each water right transition assistance pilot project program area prior to entering into any water right transition assistance pilot project program contract for the permanent retirement of part or all of landowner historic consumptive use water rights. Such meetings shall inform the public of the possible economic and hydrologic impacts of the program. The state conservation commission shall provide notice of such meetings through publication in local newspapers of record and in the Kansas register.

Accordingly, three public meetings were legally noticed, publically advertised via numerous media venues, and subsequently conducted in the Northwest Kansas Groundwater Management District on the following dates and places:

Wednesday, September 24, 2008 — 1 p.m.  
Colby Community College  
Colby, Kansas

Total Attendance: 12

Wednesday, September 24, 2008 — 7 p.m.  
Northwest Kansas Technical College  
Goodland, Kansas

Total Attendance: 25

Thursday, September 25, 2008 — 9 a.m.  
Midwest Energy, Inc.  
Hoxie, Kansas

Total Attendance: 5

Also, additional producer outreach informational meetings were held in each of the previously designated target areas, as follows:

Prairie Dog Creek Basin

Tuesday, October 28, 2008 — 7 p.m.  
Long Island Community Center  
Long Island, Kansas

Total Attendance: 13

Rattlesnake Creek Sub-basin

Wednesday, October 29, 2008 — 7 p.m.  
Long Island Community Center  
Long Island, Kansas

Total Attendance: 7

The Fall 2008 enrollment period began on October 1, 2008. Again through numerous media venues, SCC publically solicited, accepted and received applications for enrollment during the prescribed sign-up period through November 15, 2008.

41 applications were received for consideration – three applications from the Rattlesnake Creek Sub-basin, and 38 from the GMD#4 HPA target areas. No applications were received from the Prairie Dog Creek Basin area.

The applications were submitted with bid prices ranging from \$792 to \$2,000 per acre foot based on the available historic consumptive water use calculated to be available under each water right. The total bid price of each application ranged from \$51,144 to \$536,491. The total cost of all 41 applications submitted would be \$9,799, 400; approximately \$3.3 Million is available in the current FY2009 WTAP budget.

Pursuant to the WTAP administrative regulations, the Chief Engineer has conducted a review of each application to determine the eligibility of the water right proposed for retirement (dismissal). Each of three groundwater management districts with applications in their respective areas has provided recommendations for the ranking and prioritization of the applications.

As a result, SCC is currently processing and finalizing contracts on 20 of the applications – three from the Rattlesnake Creek Sub-basin and 17 from the GMD#4 High Priority areas. These 20 applications represent approximately 5,753 acre-feet of annual appropriation authorization which will be permanently retired, and also represent a net reduction of approximately 2294 acre-feet of historic consumptive water use to targeted streams and aquifers.

## **FY 2009 / FY 2010 Planned Activity**

During FY 2009 and beyond, SCC will continue to evaluate the participation factors being reflected in previous WTAP enrollments (and the similar federal CREP program) for further incorporation and improvements. Accordingly, the agency will review its compensation value annually to attract more viable participants while maintaining the most cost effective strategy for the State's operation of the program. SCC has requested \$916,273 in the FY2010 proposed budget. Authorization for the WTAP pilot project will expire on June 30, 2012.

In addition to the three main target areas which have currently been designated, SCC is receiving inquiries from various entities about the designation of additional target areas in other areas of the state. Additional target or high priority areas can only be designated 1) by the Chief Engineer of DWR in conjunction with the Board of a local Groundwater Management District (GMD); or 2) by the Chief Engineer of DWR in areas outside of local GMDs. In that regard, SCC has been cooperating with the Legislature, the Chief Engineer, the state's five groundwater management districts, and other interested organizations to address requests for the potential designation of additional WTAP target areas.

## ATTACHMENT A

### WTAP Enabling Legislation and Authorizing Statute

## Kansas Statutes Annotated

### Chapter 2.--AGRICULTURE Article 19.--CONSERVATION DISTRICTS

**2-1930. Program established; administration; funding; contracts with landowners; grants, availability, priority; annual report to legislative committees; public meetings prior to program commencement.** (a) There is hereby established the water right transition assistance pilot project program. The program shall be administered by the state conservation commission. The Kansas department of agriculture, division of water resources and recognized local governing agencies, including groundwater management districts, shall cooperate in program implementation. The program shall be administered for the purpose of reducing consumptive use in the target or high priority areas of the state by issuing water right transition grants for privately held water rights.

(b) (1) The state conservation commission may receive and expend funds from the federal or state government, or private source for the purpose of carrying out the provisions of this section. The state conservation commission and the participating groundwater management districts shall carry over unexpended funds from one fiscal year to the next.

(2) Federal and state funds shall not exceed \$1,500,000 per year.

(3) State conservation commission expenditures for permanent partial water right retirements shall not exceed 30% of the total amount of funds for the water right transition assistance pilot project program.

(c) The state conservation commission may enter into water right transition assistance pilot project program contracts with landowners that will result in the permanent retirement of part or all of landowner historic consumptive use water rights by action of the chief engineer as provided for in subsection (f) of this section.

(d) All applications for permanent water right retirements shall be considered for funding.

(e) Permanent retirement of partial water rights shall only be approved by the Kansas department of agriculture division of water resources when the groundwater management district has the metering and monitoring capabilities necessary to ensure compliance with the program. When prioritizing among water right applications for acceptance under the water right transition assistance pilot project, where rights with similar hydrologic impacts are considered, priority should be given to the senior right as determined under the Kansas water appropriation act.

(f) Water rights enrolled in the water right transition assistance pilot project program for permanent retirement shall require the written consent of all landowners and authorized agents to voluntarily request dismissal and forfeiture of priority of the enrolled water right. Upon enrollment of the water right into the water right transition assistance pilot project program, the chief engineer of the Kansas department of agriculture division of water resources shall concurrently dismiss and terminate the water right in accordance with the terms of the contract.

(g) (1) The state conservation commission shall make water right transition grants available only in areas that have been designated as target or high priority areas by the groundwater management districts and the chief engineer of the Kansas department of agriculture division of water resources or priority areas outside the groundwater management districts as designated by the chief engineer of the Kansas department of agriculture division of water resources.

(2) Two of the target or high priority areas shall be the prairie dog creek area located in hydrologic unit code 10250015 and the rattlesnake creek subbasin located in hydrologic unit code 11030009.

(h) Contracts accepted under the water right transition assistance program shall result in a net reduction in consumptive use equivalent to the amount of historic consumptive use of the water right or rights enrolled in the program based on the average historic consumptive water use. Except as provided for in subsections (i) and (j), once a water right transition assistance pilot project program grant has been provided, the land authorized to be irrigated by the water right or water rights associated with that grant shall not be irrigated permanently. Water right transition assistance pilot project program contracts shall be subject to such terms, conditions and limitations as may be necessary to ensure that such reduction in consumptive use occurs and can be adequately monitored and enforced.

"Historic consumptive water use" means the average amount of water consumed by crops as a result of the lawful beneficial use of water for irrigation during four of the six preceding calendar years, with the highest and lowest years removed from the analysis. For purposes of this program, historic consumptive water use will be determined by multiplying the average reported water use for the four selected years by a factor of 0.85 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for subsurface drip irrigation systems, but not to exceed the net irrigation requirements for the 50% chance rainfall for the appropriate county as shown in K.A.R. 5-5-12. The applicant may also submit an engineering study that determines the average historic consumptive water use as an alternative method if it is demonstrated to be more accurate for the water right or water rights involved.

(i) Enrollment in the water right transition assistance pilot project program shall not subsequently prohibit irrigation of the land that, prior to enrollment, was authorized by the water right or water rights if irrigation can be lawfully allowed by another water right or permit pursuant to the rules and regulations and consideration of any future changes to other water rights that may be proposed to be transferred to such land.

(j) If more than one water right overlaps the place of use authorized by the water right proposed to be enrolled in the water right transition assistance pilot project program, then all overlapping water rights shall be enrolled in water right transition assistance pilot project program or the landowners shall take the necessary lawful steps to eliminate the overlap with the water right to be enrolled. The burden shall be on the landowner to provide sufficient information to substantiate that the proposed use of water by the resulting exercise of all water rights involved will result in the net reduction amount of historic consumptive water use by the water right or water rights to be enrolled. The state conservation commission may require such documentation to be provided by someone with special knowledge or experience related to water rights and such operations.

(k) The state conservation commission shall adopt rules and regulations as necessary for the administration of this section. When adopting such rules and regulations the state conservation commission shall consider cropping, system design, metered water use and all other pertinent information that will permit a verifiable reduction in annual water consumptive use and permit alternative crop or other use of the land so that the landowner's economic opportunities are taken into account.

(l) The state conservation commission shall report annually to the senate standing committee on natural resources and the house standing committee on environment on the economic impact studies being conducted on the reduction of water consumption and the financial impact on the communities within the program areas. Such studies shall include comparative data for areas and communities outside the program areas.

(m) The water right transition assistance pilot project program shall expire five years from the effective date of the fiscal year for which state moneys are appropriated thereof and approval of program rules and regulations.

(n) Water right transition assistance grants for water rights to remain unused for the contract period shall constitute due and sufficient cause for nonuse pursuant to K.S.A. 82a-718 and amendments thereto pursuant to the determination of the chief engineer for the duration of the water right transition assistance pilot project program contract.

(o) The state conservation commission shall hold at least two meetings in each water right transition assistance pilot project program area prior to entering into any water right transition assistance pilot project program contract for the permanent retirement of part or all of landowner historic consumptive use water rights. Such meetings shall inform the public of the possible economic and hydrologic impacts of the program. The state conservation commission shall provide notice of such meetings through publication in local newspapers of record and in the Kansas register.

**History:** L. 2006, ch. 174, § 1; July 1.

## **ATTACHMENT B**

### **Narrative Descriptions and 2008 Amendments to WTAP Administrative Rules and Regulations**

**K.A.R. 11-12-1. Definitions.** This regulation establishes the operating definitions for words and terms which are used in the program implementation. 2008 additions and changes clarify the meanings of “closed areas”, “groundwater management districts”, “partial water right”, “priority area”, “target area”, and “retirement goal of historic consumptive water use”. The term “fair market value” was deleted because it no longer applies to the simplified compensation methodology being incorporated into the program.

**K.A.R. 11-12-2. Eligible areas.** This regulation provides clarification to the enabling legislation criteria which identifies areas eligible for participation, and further specifies the criteria and conditions for those areas in which the program will only be authorized to consider applications for water right transition grants. 2008 changes provide additional clarification to the enabling legislation criteria which identifies areas eligible for participation, and further specifies the restrictions and conditions for those areas in which the program will only be authorized to consider applications for water right transition grants. Other 2008 additions provide more detail regarding the specific inter-agency requirements, actions, and timing necessary to designate program target areas which are eligible for grant funding of water right retirements.

**K.A.R. 11-12-3. Application and review.** This regulation outlines the timelines, standards and procedures by which the agency will accept applications for consideration of water right retirement grants, provide review of the applications, request applicable information from the office of the Chief Engineer necessary to evaluate the applications, approve or reject the applications, and provide notification to the applicants of an application’s status. 2008 additions incorporate a second annual enrollment period (Spring), require applicant bids to be expressed in terms of historic consumptive water use (instead of a per-acre apportionment of the fair market value of the water right), provide for submission, consideration, and notification of GMD recommendations regarding WTAP applications, and amend application submission details consistent with these modifications and permanent reductions of water rights. Other 2008 changes delete the requirements relating to county appraiser’s land parcel content sheets.



**K.A.R. 11-12-4. Payment.** This regulation identifies the basis on which applications for water right retirement grant applications will be evaluated and prioritized for payment. The payment is based on the features of the water right including the desired hydrologic effects of retiring the water right, the applicants bid price, and other related parameters. It describes the conditions of approval by the agency, the methods of payment, and any restrictions pertaining to the payments for approved applications. 2008 additions establish grant payments directly on a fixed rate of the “per acre-foot of historic consumptive water use retired”, and that the base rate will be established annually by the commission after considering recommendations of the GMDs and the Chief Engineer, DWR. Other 2008 changes delete references to payment based on the fair market value of the water right as determined from local and state appraisal data, the applicants bid price not exceeding 20% of the fair market value, and other related parameters.

**K.A.R. 11-12-5. Transition to dry land.** This regulation provides a mechanism for water rights to be conditioned so as to provide for a brief period of limited irrigation where lands are being converted to permanent vegetation. It further provides a mechanism for the agency to require dry land transition plans prior to approval of water right transition grants, and references the Natural Resource Conservation Service standards by which such plans must meet acceptable soil erosion prevention practices.

**K.A.R. 11-12-6. Dismissal of water right.** This regulation describes the particularly unique conditions and requirements for the agency to obtain and verify the formal dismissal of the water right prior to payment of a water right transition grant. 2008 additions clarify the status of “partial” water rights which are being permanently reduced and more clearly specifies the information verifying proper water well disposition which the commission must receive prior to issuing WTAP grants. Other 2008 changes delete the references to standards and specifications for recipients of grants to properly decommission actively operating irrigation wells and recondition such wells to comply with the regulatory requirements of the Kansas Department of Health and Environment in order to avoid inter-agency duplication of regulatory requirements.

**K.A.R. 11-12-7. Petition for reconsideration.** This regulation sets forth the opportunities and deadlines for applicants of water right transition grants to administratively appeal the decisions of the agency. It details the circumstances in which the agency will provide a final decision, and also details the occasion in which the final decision of the agency will be considered the final agency action.

# **Kansas Administrative Regulations: K.A.R. 11-12-1 to 11-12-7.**

## **Article 12. WATER RIGHT TRANSITION ASSISTANCE PILOT PROJECT PROGRAM**

**11-12-1. Definitions.** (a) “Active vested or certified water right” means a vested water right or currently certified appropriation water right that was put to lawful beneficial use in at least six out of the last 10 calendar years, including any water use that occurred before certification.

(b) “Chief engineer” means the chief engineer of the division of water resources, Kansas department of agriculture.

(c) “Closed to new appropriations” and “closed to further appropriations” mean that the chief engineer has issued a formal findings and order or has adopted a regulation and that either the formal findings and order or the regulation prevents the approval of new applications to appropriate water except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(d) “Commission” means the state conservation commission.

(e) “Consumptive use” means the gross diversions minus the following:

(1) The waste of water, as defined in K.A.R. 5-1-1; and

(2) the return flows to the source of water supply in the following ways:

(A) Through surface water runoff that is not waste; and

(B) by deep percolation.

(f) “Dry land transition plan” means a plan submitted by an applicant describing how the use of dry land crops or permanent vegetation, including warm season grasses and cool season grasses, or both uses, will be established on land that was previously irrigated. If permanent vegetation will be established on land that was previously irrigated, the plan shall meet the following requirements:

(1) Specifically describe the amount and timing of any irrigation that will be necessary to establish this cover; and

(2) not exceed three calendar years.

(g) “Eligible water right” means a water right that meets all of the following criteria:

(1) The water right is an active vested or certified water right that has not been abandoned and is privately owned.

(2) The water right has been verified by the chief engineer as being in an area that is in need of aquifer restoration or stream recovery and is closed to new appropriations of water by the chief engineer, except those for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(3) The state’s dismissal of the water right would have a net reduction in consumptive water use of the aquifer or stream designated for restoration or recovery by the chief engineer.

(4) The point of diversion is located within an eligible area.

(h) “Groundwater management district” and “GMD” mean any district created by K.S.A. 82a-1020 et seq., and amendments thereto.

(i) “Local entity” means any political subdivision chartered to address water conservation.

(j) “Partial water right” means a portion of a water right that will be formally and permanently reduced from a water right by the chief engineer upon approval of an application for enrollment based on the agreement of all of the owners of the water right. For a partial water

right to be deemed an eligible water right, the partial water right shall be associated with a portion of the distribution system, a point of diversion, a place of use, or a type of use that is being physically discontinued. Before enrollment of the partial water right, the chief engineer shall determine the historic net consumptive use that was associated with each portion of the beneficial use of the water right being considered. At the time of enrollment of the partial water right, the owner shall reduce the quantity remaining under the portion of the water right not being enrolled in the water right transition assistance pilot project program and any overlapping water rights to the net consumptive use requirement associated with the remainder of the operation. A partial water right shall not be deemed an eligible water right if there is no physical change in the operation, including discontinuing a point of diversion, discontinuing a type of use, converting to a more efficient system, irrigating less water-intensive crops, or reducing the size of the place of use or the number of irrigated acres.

(k) “Priority area” means a geographic area that meets the following conditions:

(1) Is designated by one of the following:

(A) A groundwater management district and the chief engineer, if the area is within the boundaries of a groundwater management district; or

(B) the chief engineer, if the area is outside the boundaries of a groundwater management district; and

(2) is located within a target area that has been delineated for the purpose of ranking any applications being received for grant funding approval in the water right transition assistance pilot project program.

(l) “Program” and “WTAP” mean the water right transition assistance pilot project program.

(m) “Retirement goal of historic consumptive water use” means the total quantity of historic consumptive water use necessary to be retired to meet the goal of the water right transition assistance pilot project program in each target area. The identification of a retirement goal of historic consumptive water use in each target area provides a reference point for evaluating the program objectives of the water right transition assistance pilot project program. The attainment of a retirement goal of historic consumptive water use in a particular target area indicates that no more water right transition assistance pilot project program funds should be expended in that target area without a requantification of the retirement goal of historic consumptive water use.

(n) “Target area” means a geographic area that meets the following conditions:

(1) Is designated by one of the following:

(A) An applicable Kansas statute;

(B) a groundwater management district and the chief engineer, if the area is within the boundaries of a groundwater management district; or

(C) the chief engineer, if the area is outside the boundaries of a groundwater management district;

(2) is one of the following:

(A) A surface water basin, subbasin, or stream reach;

(B) a groundwater aquifer or aquifer subunit; or

(C) a combination of paragraphs (m)(2)(A) and (B); and

(3) is located in an area with a need for reduction of consumptive use of water.

(o) “Water right” means any vested right or appropriation right under which a person may lawfully divert and use water. A water right is a real property right appurtenant to and severable from the land on or in connection with which the water is used. The water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other voluntary disposal, or by inheritance. (Authorized by and implementing K.S.A. 2007 Supp. 2-1930; effective Aug. 3, 2007; amended Sep. 26, 2008.)

**11-12-2. Eligible areas.** (a) Each eligible area shall meet either of the following criteria:

(1) The area meets the following conditions:

(A) Is within a groundwater aquifer or aquifer subunit that the chief engineer has closed to further appropriations except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program; and

(B) is located where the rate of withdrawal of groundwater equals or exceeds the rate of recharge and the groundwater aquifer or aquifer subunit is designated by the chief engineer as being in need of aquifer restoration.

(2) The area meets the following conditions:

(A) Is within a surface water basin, subbasin, or stream reach that the chief engineer has closed to further appropriations except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program; and

(B) is located where the rate of withdrawal of surface water equals or exceeds the rate of inflow and the surface water basin, subbasin, or stream reach is designated by the chief engineer as being in need of stream recovery.

(b) Each eligible area shall also meet one of the following criteria:

(1) The board of the GMD has designated the area as a target area, and this designation has been approved by the chief engineer. Each eligible area within a GMD shall require a formal action by the board of a GMD requesting the chief engineer to approve the designation of a target area. The request shall include documentation on the criteria used by the GMD to identify the area that is in need of aquifer restoration or streamflow recovery, which shall include the retirement goal of historic consumptive water use for each proposed target area and the designation of any priority areas within the target area.

(2) Outside a GMD, the chief engineer has designated the area as a target area. Each eligible area outside a GMD shall require documentation of the criteria used by the chief engineer to identify the area that is in need of aquifer restoration or streamflow recovery, which shall include the retirement goal of historic consumptive water use for each proposed target area and the designation of any priority areas within the target area.

(c) The chief engineer shall notify the commission of all additional designated target areas and priority areas before July 1 of each grant funding cycle and shall provide technical data that will assist the commission in determining the ranking of the areas relative to any previously designated target areas or priority areas.

(d) The ranking of the additional designated target areas and priority areas relative to any previously designated target areas and priority areas shall be determined by the commission. (Authorized by and implementing K.S.A. 2007 Supp. 2-1930; effective Aug. 3, 2007; amended Sep. 26, 2008.)

**11-12-3. Application and review.** (a) The application periods for the program shall be October 1 through November 15 and February 15 through March 31.

(b) Notification of the program shall be published in the Kansas register.

(c) The program procedures and application forms shall be available at the commission office and at conservation district offices.

(d) Each application shall be submitted on a form supplied by the commission. The application shall include all of the following:

(1) The name, address, and telephone number of the owner of the water right;

(2) the water right file number and the priority date of the water right;

- (3) the location of the point of diversion;
- (4) documentation of the annual water usage, in acre-feet, for the previous 10 years;
- (5) the authorized annual quantity of water associated with the water right;
- (6) the bid price expressed on a “per acre-foot of historic consumptive water use”

basis;

- (7) if the land is going to be planted to permanent cover, a dry land transition plan;
- (8) documentation that verifies historical crop information for the previous 10 years;
- (9) documentation of the normal rate of diversion during the normal irrigation season.

If the documentation is not based on data from an accurate water flowmeter, the results of a certified well flow rate test conducted no more than six months before the application date by a person or entity approved by the chief engineer and in a manner prescribed by the chief engineer shall be used for this documentation;

(10) the total amount of historic consumptive water use available for retirement or permanent reduction under the water right as determined from the calculation method specified in K.S.A. 2-1930(h) and amendments thereto; and

(11) the total amount of historic consumptive water use being proposed for retirement or permanent reduction and specification of whether only a partial water right is being submitted for retirement in the application.

(e)(1) Upon the commission’s receipt of each application, it shall be reviewed for completeness by the commission. If the application is not complete, the missing information shall be provided by the applicant to the commission within 30 days of the commission’s written request.

(2) After the application is determined to be complete, the application shall be provided by the commission to the chief engineer to determine the eligibility of the water right.

(f) Upon completion of the review by the chief engineer, the following certifications shall be requested by the commission from the chief engineer:

- (1) A statement indicating whether the water right is an eligible water right;
- (2) the historic consumptive water use associated with each water right or portion of a water right;
- (3) the potential impact of dismissing the water right on aquifer restoration or stream recovery; and
- (4) any other additional documentation necessary to quantify or qualify the water use reports.

(g) Comments and recommendations from the appropriate GMD shall be requested by the commission regarding WTAP applications in any target area within that GMD. The chief engineer and the appropriate GMD shall be notified by the commission regarding approval or disapproval of any WTAP applications in any target area within that GMD.

(h) The applications shall be prioritized for payment by the commission based on criteria that include the following:

- (1) The timing and extent of the impact of the application on aquifer restoration or stream recovery;
- (2) the impact on local water management strategies and on target areas designated by the board of each GMD and by the chief engineer; and
- (3) the priority date of the water right.

(i) Each applicant shall be notified by the commission of the approval or the disapproval of the program application no later than 60 days after the close of the application period in which the application is filed. If an application is not approved, the application, water right dismissal form, and all other related documents shall be considered void and shall be returned to the applicant.

(j) Any application meeting the requirements of this article may be approved contingent upon funding and the receipt of official documentation by the commission that the water right has been dismissed by the chief engineer and its priority has been forfeited.

(k) The negotiations between owners and lessees regarding program participation shall not involve the commission.

(l) No more than 10 percent of a county's irrigated acres shall be eligible for the duration of this program.

(m) There shall be no financial contribution requirement for a local entity. However, financial contributions by a local entity may increase the priority of an application.

(n) Each program application that does not meet the requirements of these regulations shall be rejected by the commission. (Authorized by and implementing K.S.A. 2007 Supp. 2-1930; effective Aug. 3, 2007; amended Sep. 26, 2008.)

**11-12-4. Payment.** (a) The application approval and payment amounts shall be based on the following:

- (1) The priority date of the water right;
- (2) the calculated quantity of the historic consumptive water use of the water right;
- (3) the impact of the water right's dismissal or permanent reduction on aquifer restoration or stream recovery;
- (4) the amount of monetary contributions from a local entity or the applicant, or both;
- (5) the applicant's bid price; and
- (6) the terms of any request to continue irrigating on a limited basis to establish permanent vegetation.

(b) The maximum amount paid by the commission for the retirement of a water right authorized for irrigation shall not exceed a base rate per acre-foot of historic consumptive water use made available for retirement under the water right to be dismissed or permanently reduced. The base rate shall be established annually by the commission after considering recommendations provided by the GMDs and the chief engineer.

(c) Each water right owner shall sign a water right transition assistance grant agreement before payment is made by the commission. Each grant agreement shall include the following provisions:

(1) The price to be paid by the commission to the water right owner for the dismissal or permanent reduction of the subject water right and the terms of payment;

(2) the date on which the agreement will become effective;

(3) the file number of the water right to be retired or permanently reduced;

(4) one of the following statements:

(A) The approval is conditional on documentation being provided to the commission indicating that the chief engineer has dismissed or permanently reduced the water right and ordered its priority to be forfeited; or

(B) the approval is conditional on documentation being provided to the commission indicating any terms of the chief engineer to continue irrigation on a limited basis, not to exceed three years, for the purpose of establishing permanent vegetation. The documentation shall include the date on which the water right dismissal will become effective and its priority will be forfeited; and

(5) if the point of diversion is located within a GMD, a provision that any remaining water user charges assessed by the district before the water right is dismissed will remain the sole responsibility of the owner of the water right.

(d) Payment shall be made in equal annual installments, not to exceed 10, or, if approved by the commission, in one lump sum payment. If annual payments are elected, the first

payment shall be made within 60 days after execution of the water right transition assistance grant. The subsequent payments shall be made within 60 days after the beginning of each new state fiscal year. The following factors shall be considered by the commission when determining which payment schedule to use:

- (1) The number of eligible applicants; and
- (2) the amount of program funds for that year.

(e) If there is a standing crop at the time of application approval, payment shall not be made until after irrigation from the subject water right has permanently ceased. (Authorized by and implementing K.S.A. 2007 Supp. 2-1930; effective Aug. 3, 2007; amended Sep. 26, 2008.)

**11-12-5. Transition to dry land.** (a) If land that will no longer be irrigated is to be planted, under this program, to permanent vegetation including warm or cool season grasses, the chief engineer may be requested by the commission to condition the dismissal of the associated water right to allow limited irrigation of the land for up to three years to establish this cover.

(b) The applicant shall submit a dry land transition plan to the commission if land is to be planted to warm or cool season grasses or other permanent vegetation. A dry land transition plan may be disapproved by the commission and modifications to any dry land transition plan may be required by the commission if the plan does not meet the requirements for soil erosion prevention practices in section IV of the “Kansas field office technical guide” as adopted by reference in K.A.R. 11-7-14. (Authorized by and implementing K.S.A. 2006 Supp. 2-1930; effective Aug. 3, 2007.)

**11-12-6. Dismissal or permanent reduction of water right.** (a) Each water right or partial water right for which payment is received from the program shall be dismissed or permanently reduced by the chief engineer, and the priority of the water right or that portion of the water right shall have been forfeited.

(b) The chief engineer shall be requested by the commission not to appropriate or reappropriate any additional water in an eligible area if payments have been made for the program in that eligible area, except for the following, if the use, permit, or exemption does not conflict with this program:

- (1) Domestic use;
- (2) temporary permits;
- (3) term permits for five or fewer years; and
- (4) small use exemptions for 15 acre-feet or less.

(c) A copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the commission before the grantee receives the first payment. The requirements specified in this subsection shall be temporarily waived if a conditional water right is approved by the chief engineer under a dry land transition plan.

(d) For wells approved to continue operating under a dry land transition plan, a copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the commission within 60 days of the last time that the permanent vegetation is irrigated. (Authorized by and implementing K.S.A. 2007 Supp. 2-1930; effective Aug. 3, 2007; amended Sep. 26, 2008.)



**11-12-7. Petition for reconsideration.** (a) Any water right owner may request reconsideration of any decision of the commission by filing a petition for reconsideration.

(b) Each petition for reconsideration shall be submitted in writing to the commission within 30 days of the commission's decision and shall state why the commission's decision should be reviewed and why the decision should be modified or reversed.

(c) The petition for reconsideration shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The commission's final decision shall state each reason for this determination.

(d) The decision of the commission shall be considered the final agency action if no petition for reconsideration of that commission decision has been received by the commission after 30 days from the date on which the decision was made. (Authorized by and implementing K.S.A. 2006 Supp. 2-1930; effective Aug. 3, 2007.)

## ATTACHMENT C

### WTAP Target Area Water Appropriation Summary\*

#### Prairie Dog Creek Basin

		<u># Water Rights</u>	<u>Net AF Authorized</u>
Vested	Surface	8	462
Appropriated	Surface	29	13,902
Vested	Ground	13	1,864
Appropriated	Ground	557	78,822
<b>Total</b>		<b>607</b>	<b>95,050 acre-feet</b>

**Total Consumptive Water Use Reduction Goal: 3800 acre-feet**

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#### Rattlesnake Creek Sub-basin

Vested	Surface	2	222
Appropriated	Surface	3	14,721
Vested	Ground	11	3,073
Appropriated	Ground	1259	230,993
<b>Total</b>		<b>1275</b>	<b>249,009 acre-feet</b>

**Total Consumptive Water Use Reduction Goal: 7,396 acre-feet**

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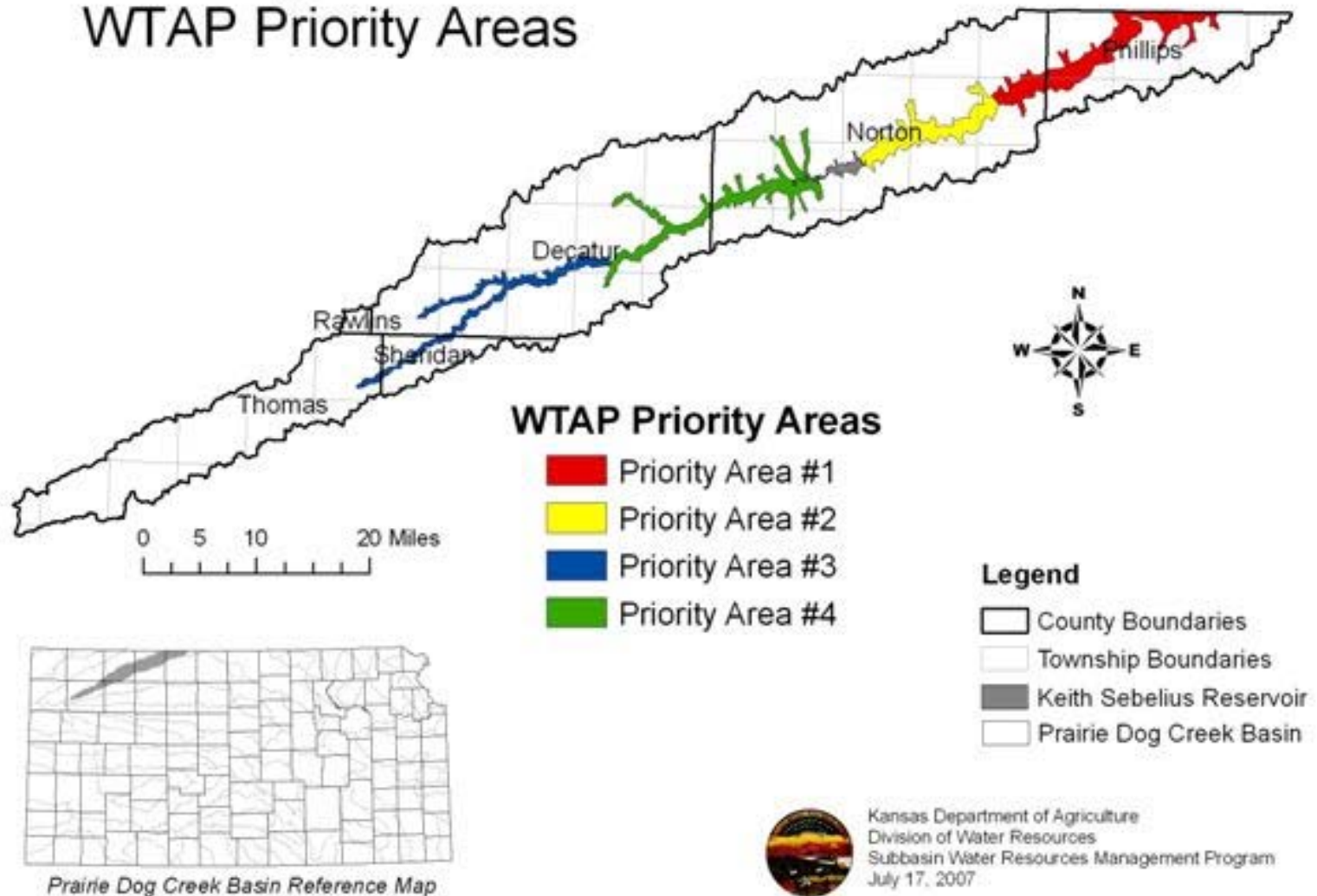
#### GMD #4 HP Areas

	<u>Net AF Authorized</u>	<u>HCWU Retirement Goal</u>
Sherman County HPA #1	58,000	6,000
Sherman County HPA #2	25,500	4,000
Cheyenne County HPA #3	15,100	2,000
Thomas County HPA #4	1,660	1,107
Thomas County HPA #5	85,000	15,000
Sheridan County HPA #6	61,000	12,000
<b>Total</b>	<b>261,260 acre-feet</b>	<b>40,107 acre-feet</b>

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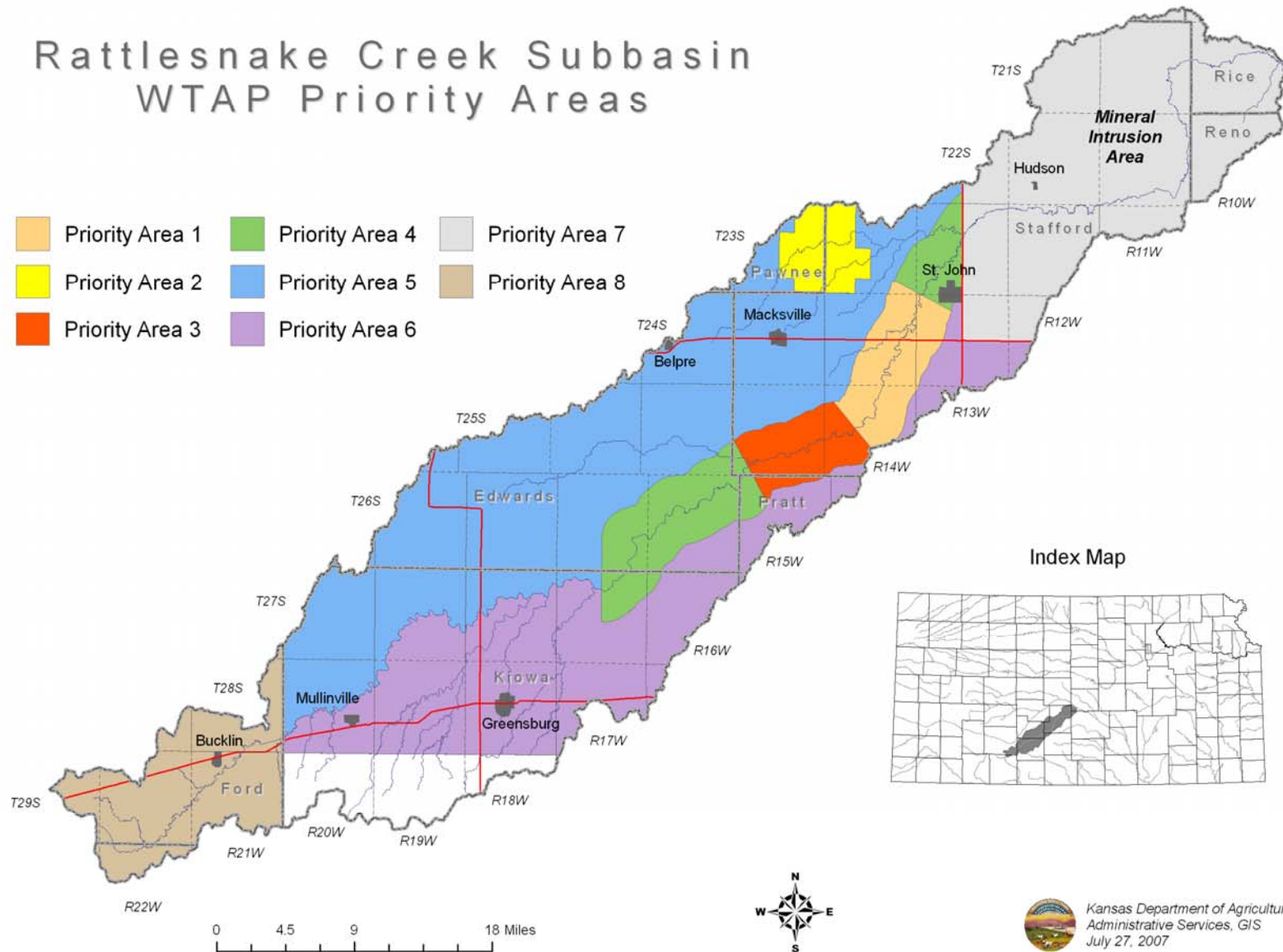
## ATTACHMENT D

### Prairie Dog Creek Basin WTAP Priority Areas



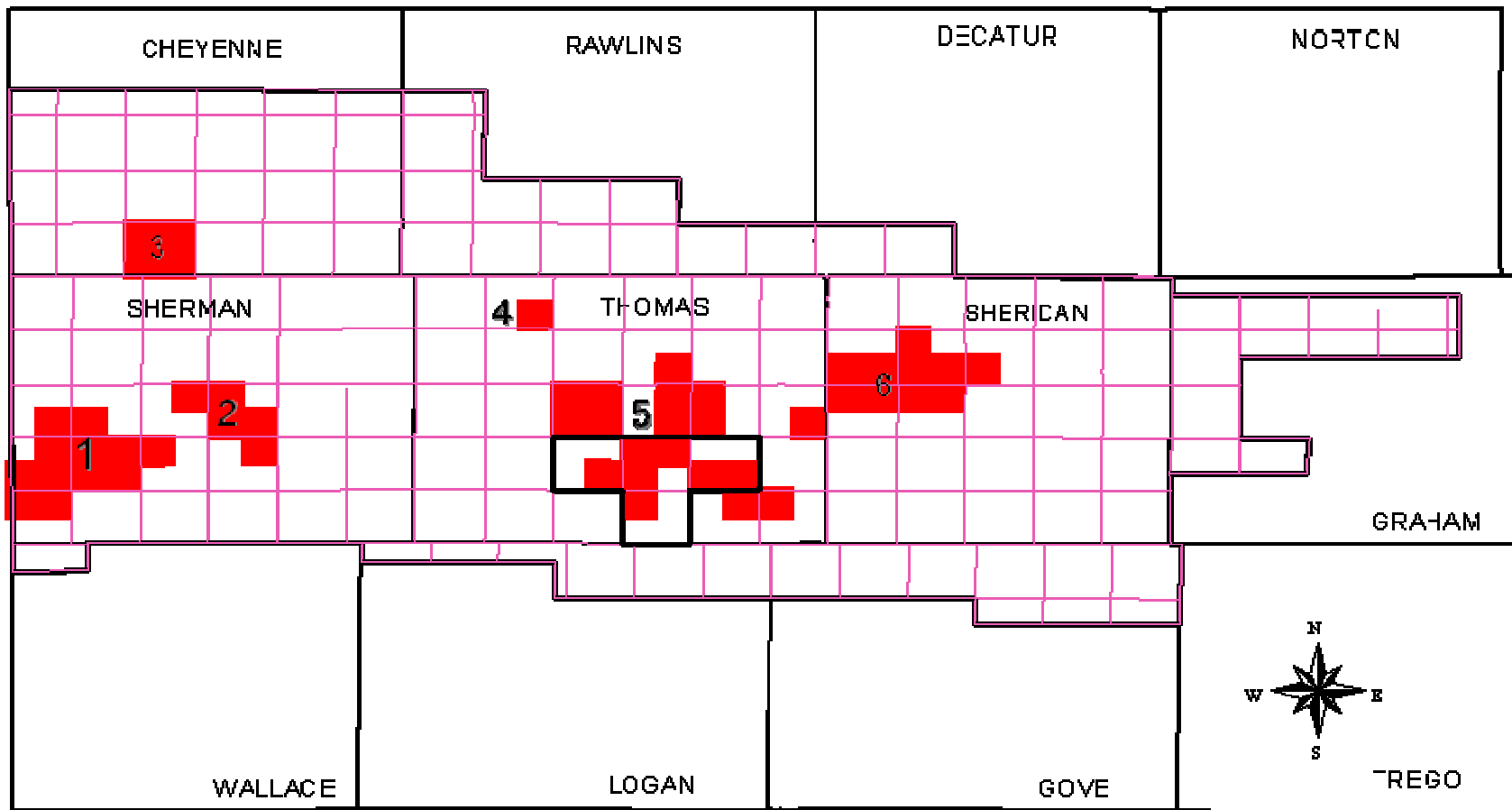
# Rattlesnake Creek Subbasin WTAP Priority Areas

- |   |   |   |
|---|---|---|
|  Priority Area 1 |  Priority Area 4 |  Priority Area 7 |
|  Priority Area 2 |  Priority Area 5 |  Priority Area 8 |
|  Priority Area 3 |  Priority Area 6 |   |



Kansas Department of Agriculture  
Administrative Services, GIS  
July 27, 2007

## GMD4 High Priority Areas Adopted March 8, 2007

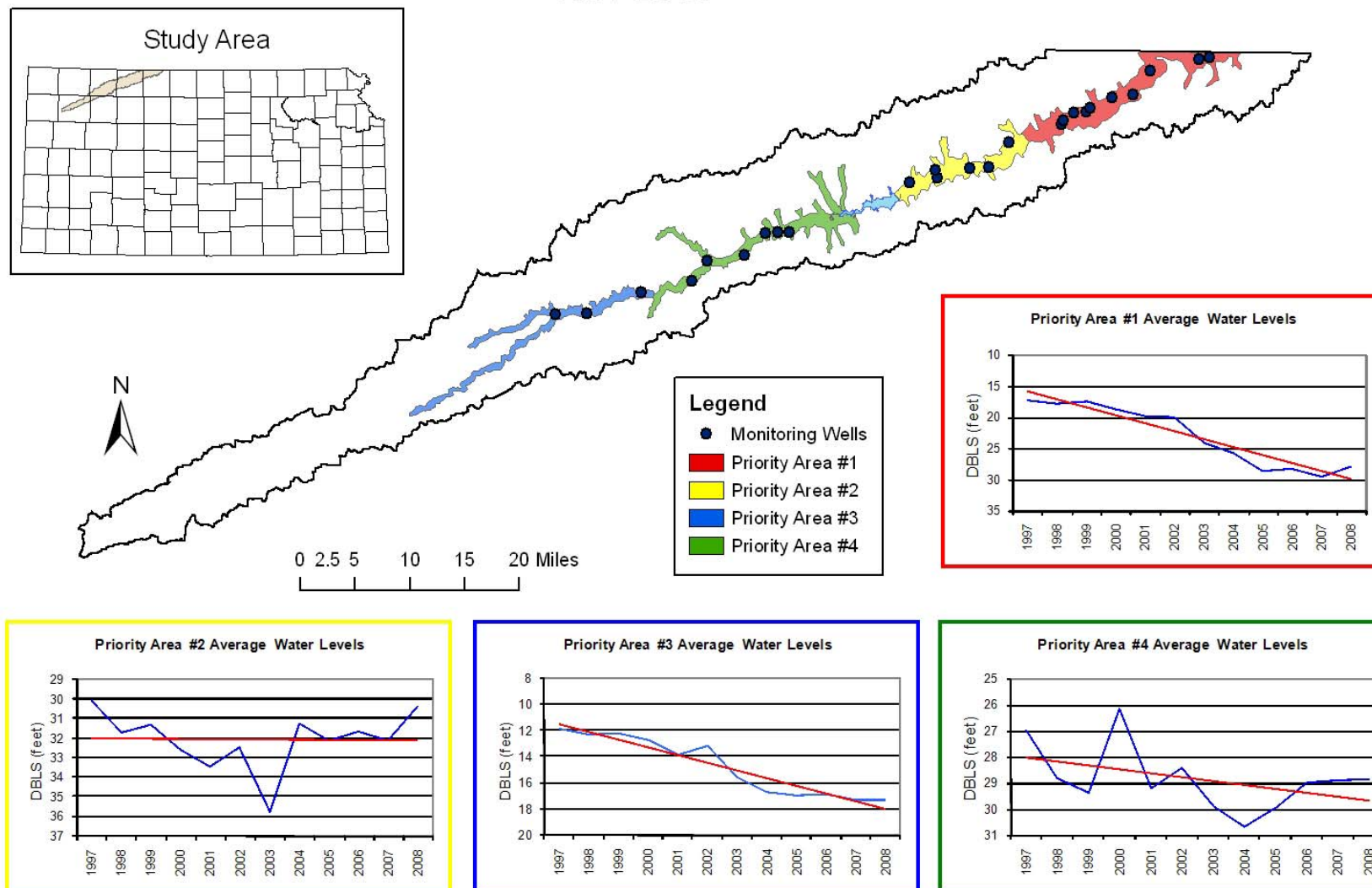


These “High Priority Area” aquifer sub-units were approved for enhanced groundwater management options by the Board of Directors, Northwest Kansas Groundwater Management District No. 4, on March 8, 2007. They were formally approved and designated as WTAP target areas by the Chief Engineer, Division of Water Resources, on September 22, 2008.

# Monitoring Wells and Average Groundwater Levels

Prairie Dog Creek Water Tap Priority Area

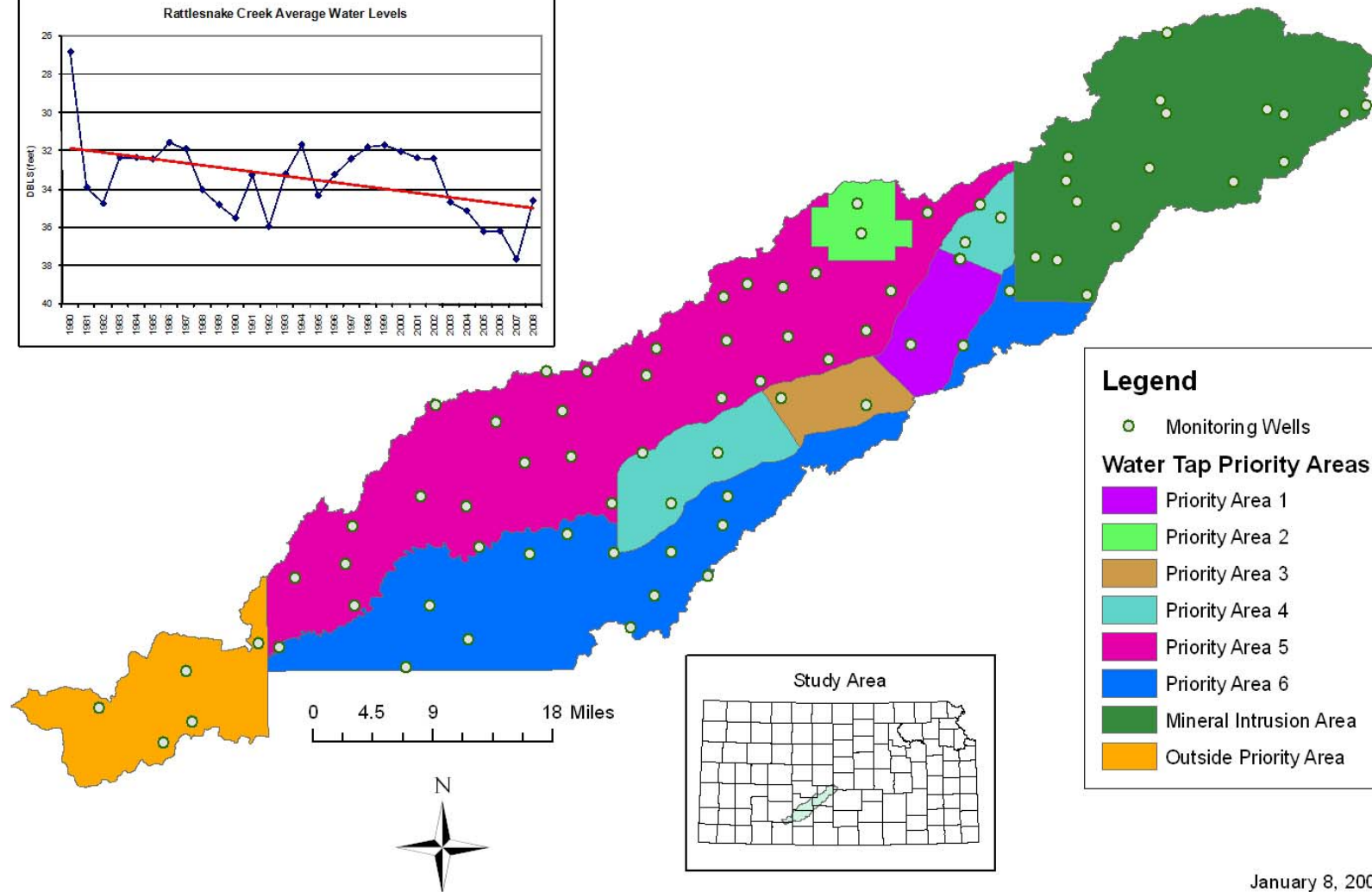
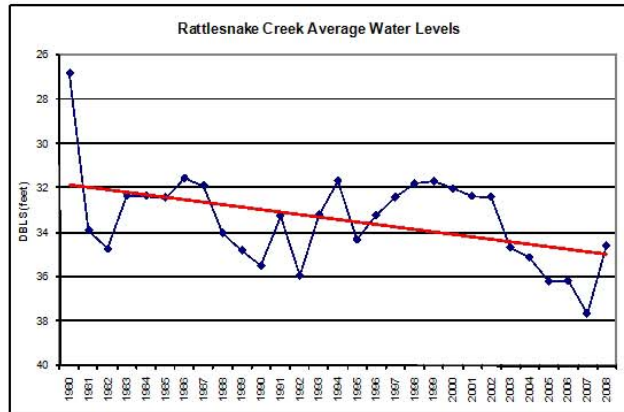
1997-2008



January 8, 2009

# Monitoring Wells and Average Groundwater Levels

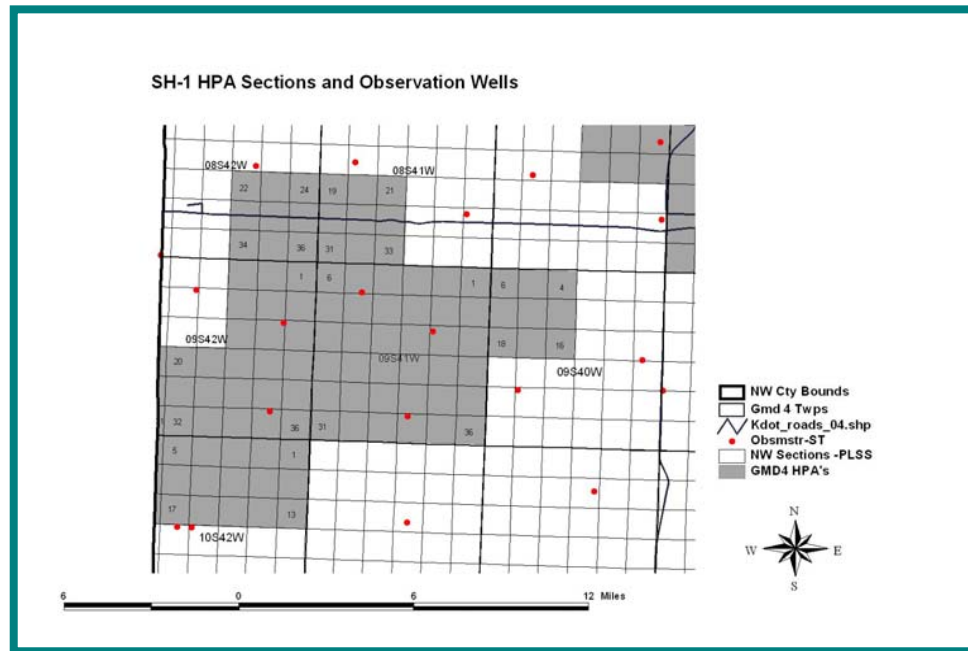
Rattlesnake Creek Water Tap Priority Area  
1980 - 2008



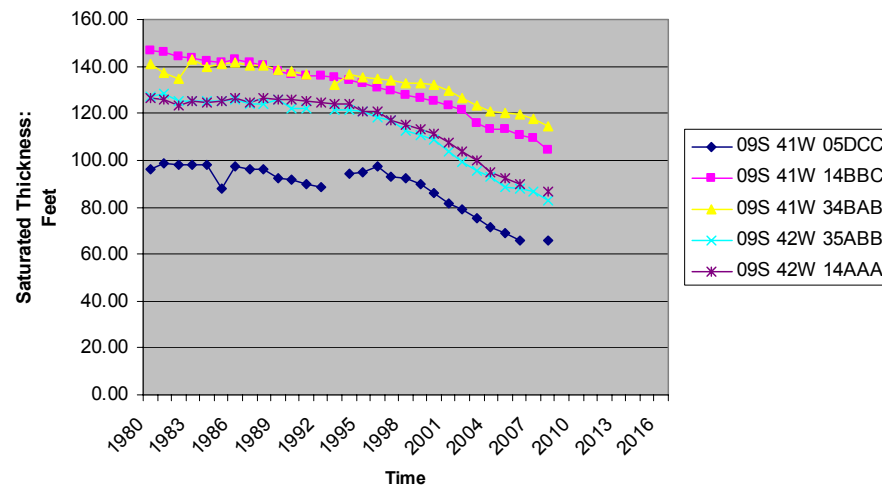
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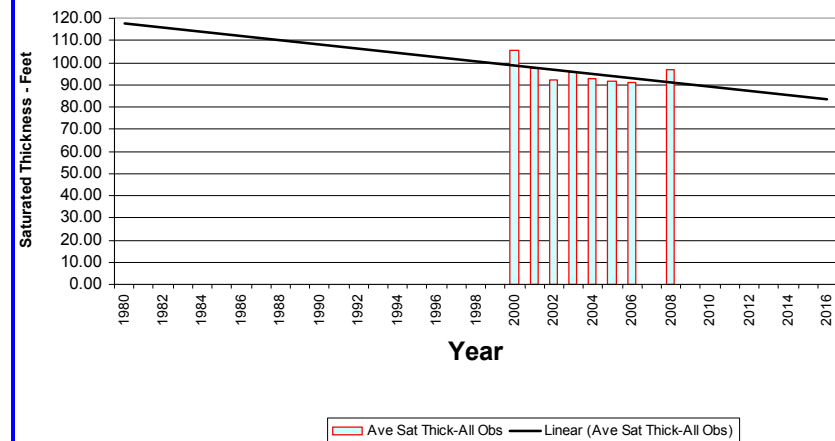
## GMD #4 High Priority Area Sherman County - 1



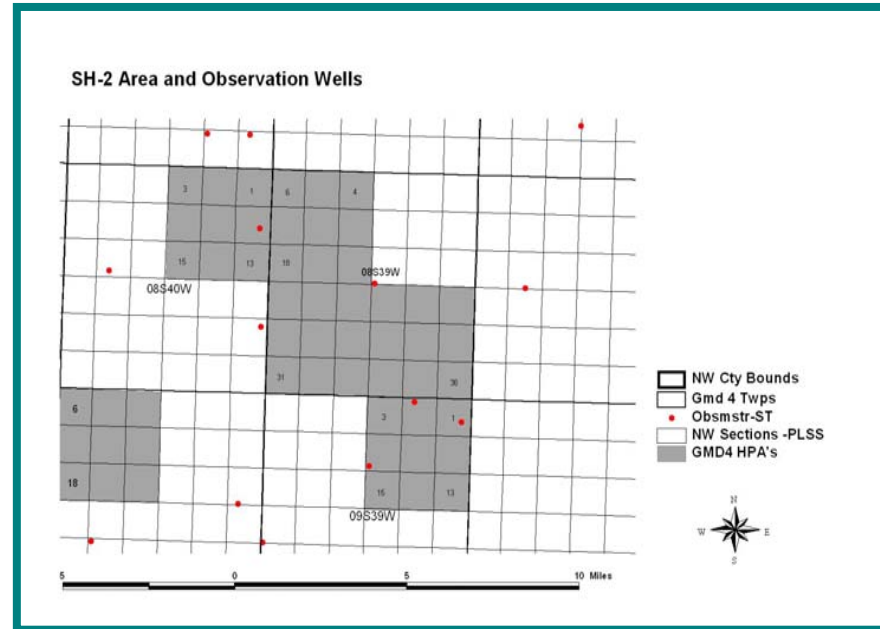
**SH-1 Obs Well Saturated Thicknesses**



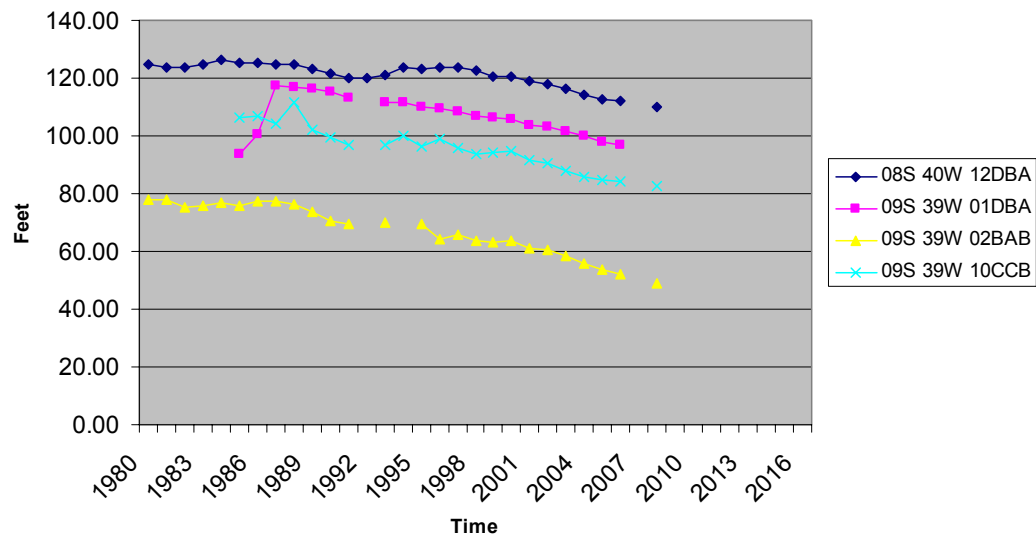
**1980-2008: Annual Average Saturated Thickness**



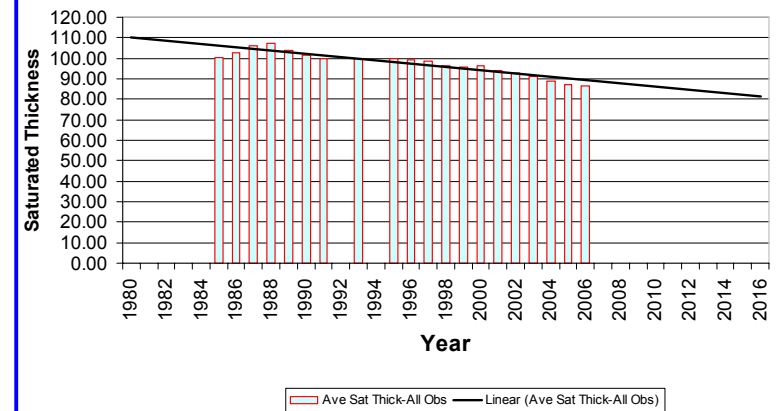
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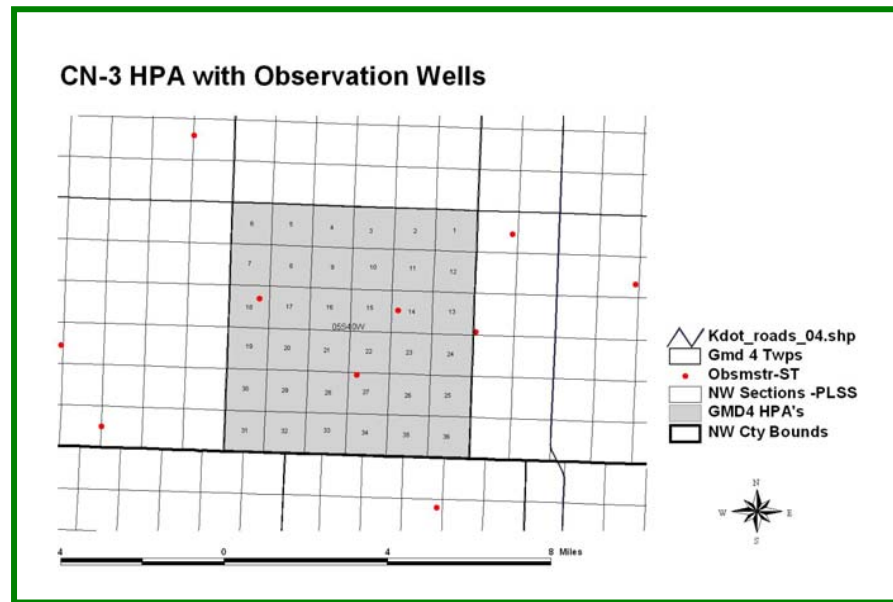
**SH-2 Obs Well Hydrographs**



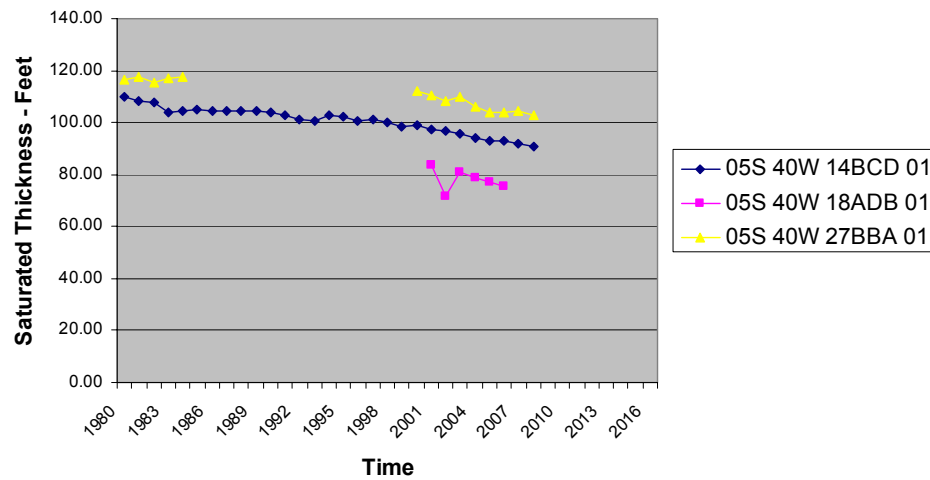
**1980-2008: Annual Average Saturated Thickness**



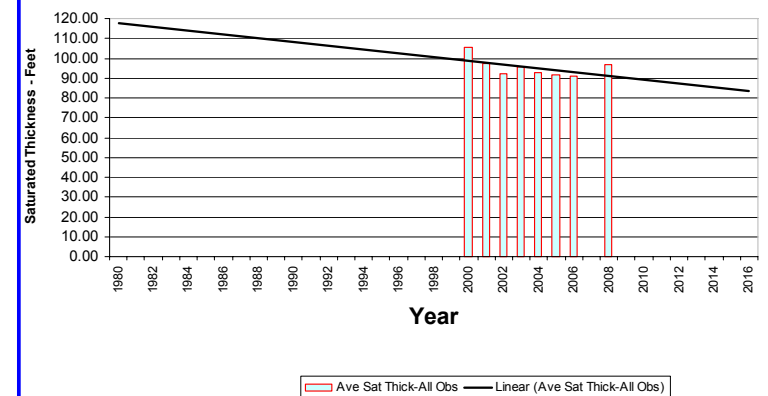
## GMD #4 High Priority Area Cheyenne County – 3



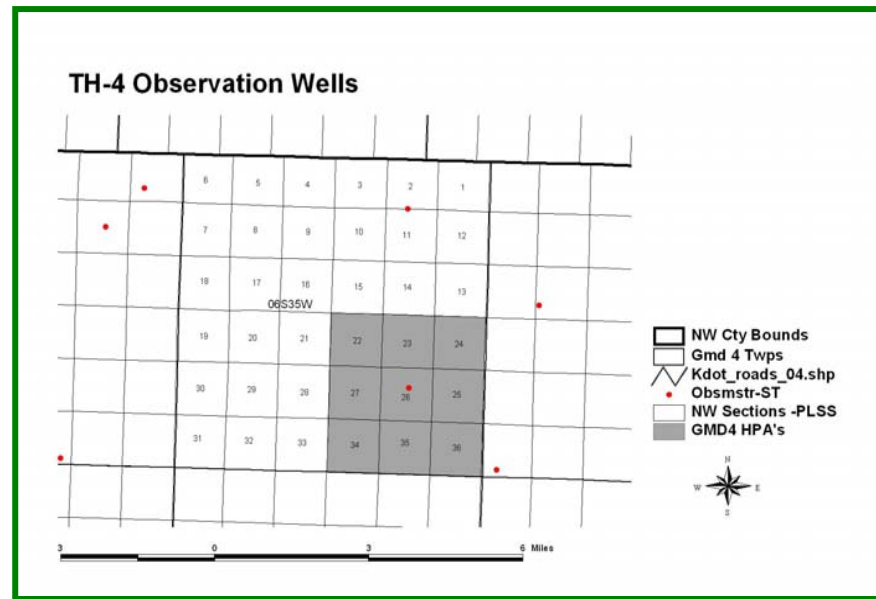
**CN-3 OBS Wells - Changes in Saturated Thickness**



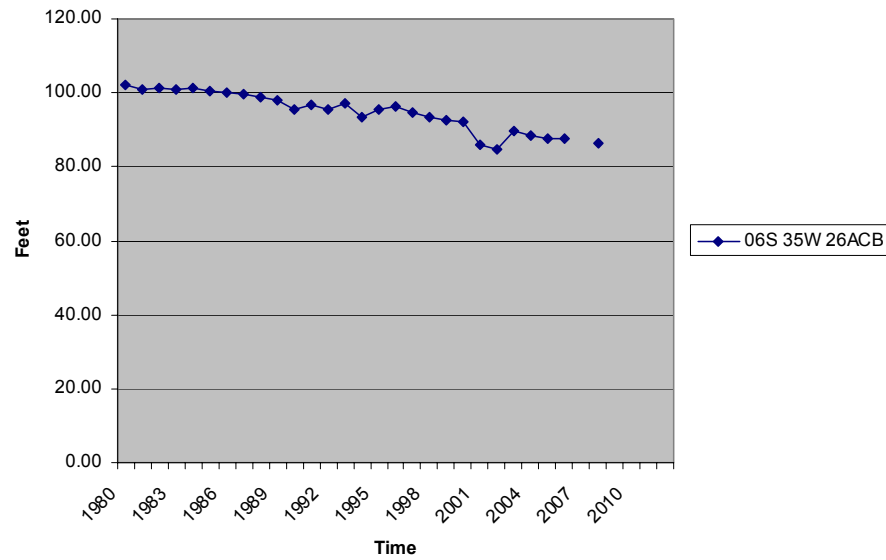
**1980-2008: Annual Average Saturated Thickness**



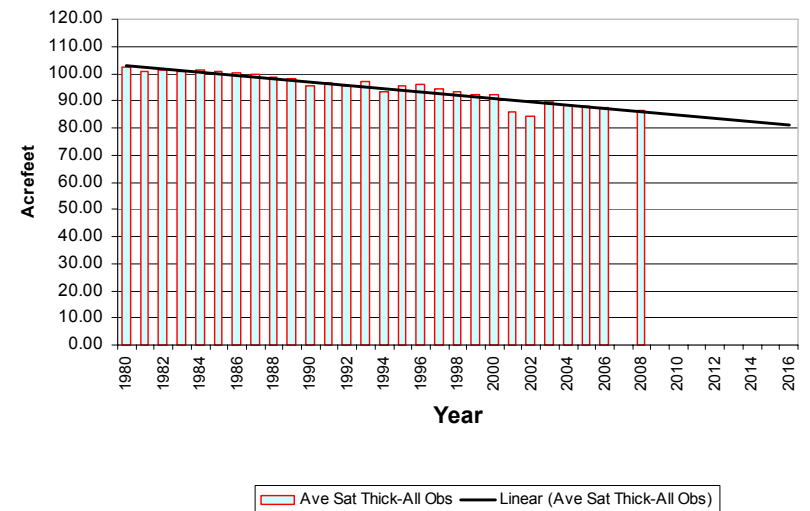
## GMD #4 High Priority Area Thomas County - 4



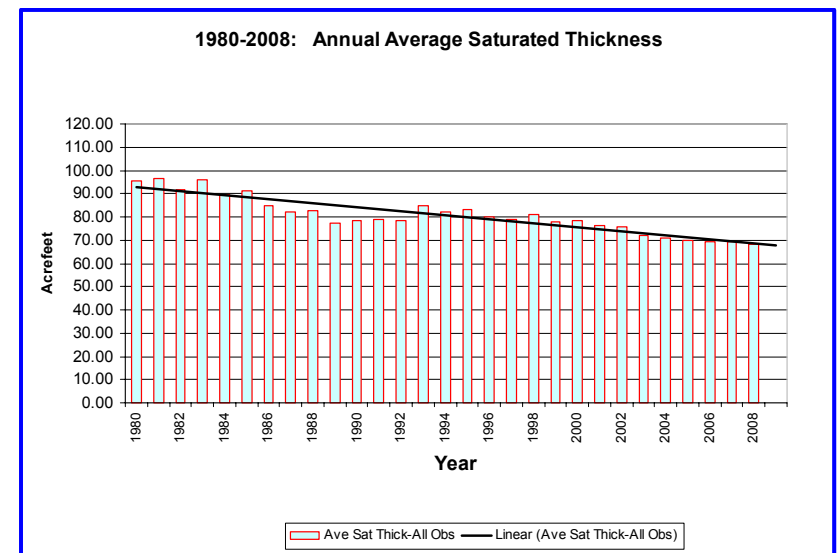
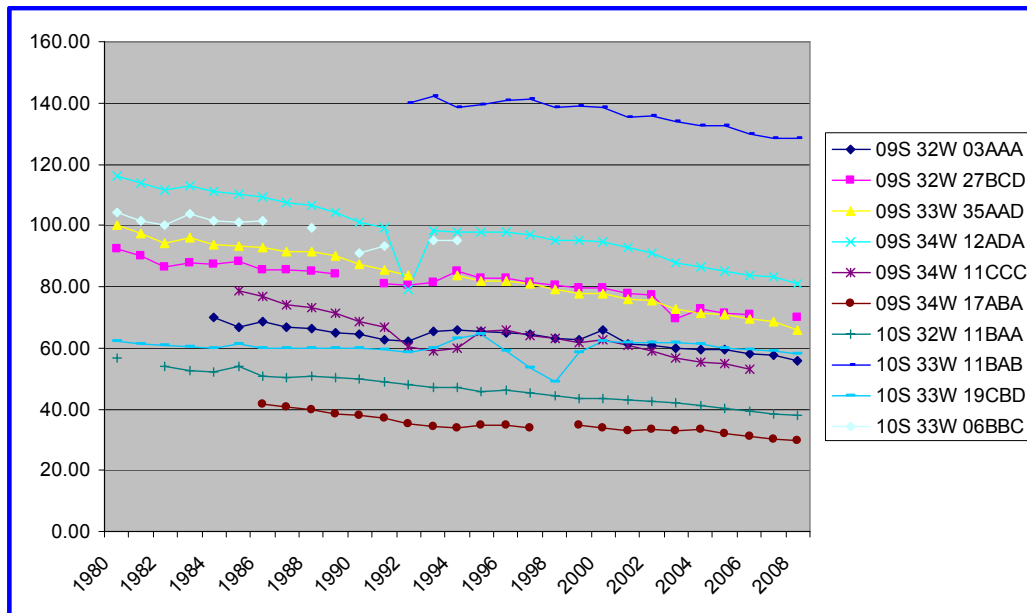
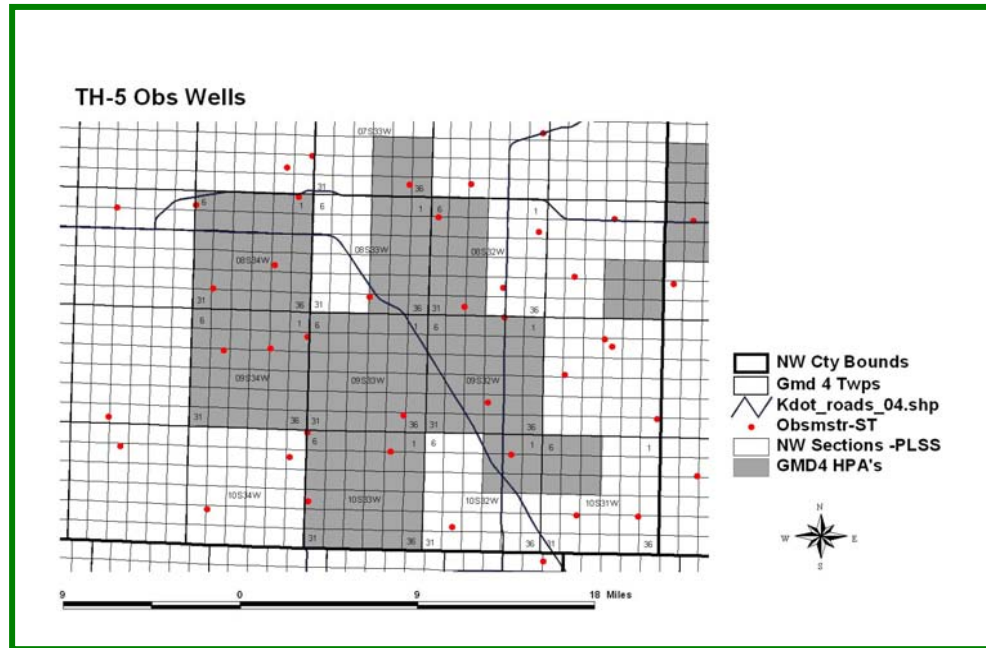
**TH-4 Obs Wells - Changes in Saturated Thickness**



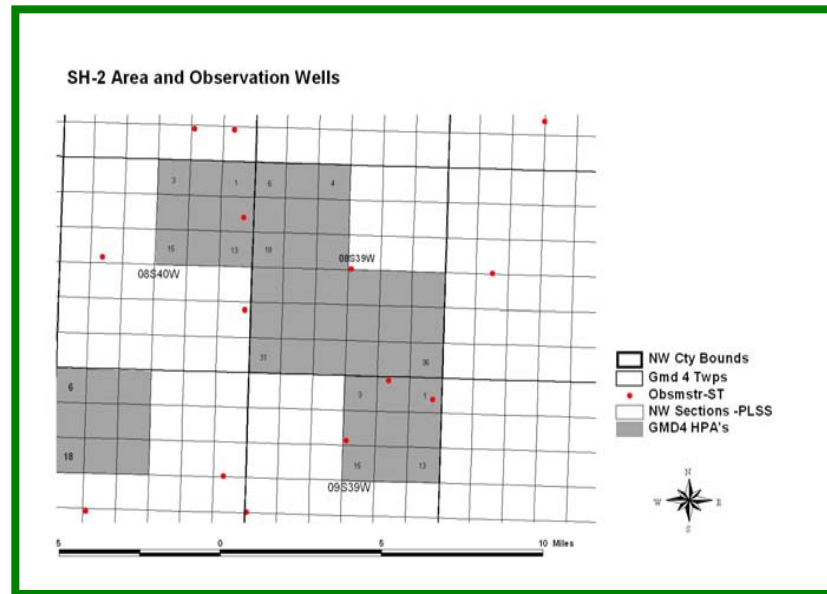
**1980-2008: Annual Average Saturated Thickness**



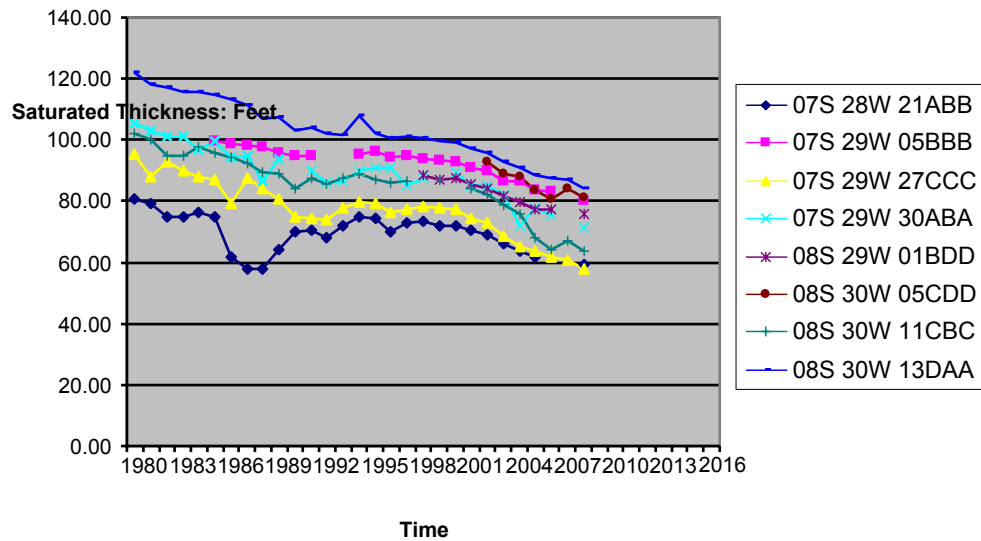
## GMD #4 High Priority Area Thomas County - 5



## GMD #4 High Priority Area Sheridan County - 6



**SD-6 Obs Well Hydrographs**



**1980-2008: Annual Average Saturated Thickness**

